

REMARKS

Claims 1-13 are pending. Claims 1 and 11-13 have been amended. New independent claims 14-17 have been added. No new matter has been added by way of this amendment. Reconsideration of the application is requested.

Claims 1, 11, and 12 stand rejected under 35 U.S.C. 112, 1st ¶, as failing to comply with the written description requirement. According to the remarks in the Office Action:

The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added limitation "uppermost portions of respective protrusions defining contact points only at locations where said top sheet comes into contact with a wear's skin" is new matter. The limitation is constructed to mean that only the uppermost portions of the protrusions are in contact with the wear. The Examiner is unable to find support for this limitation in the specification or the drawings.... As such the limitation is deemed to be new matter and is required to be removed from the claims.

In response to this ground of rejection, Applicants have amended claims 1, 11, and 12 in a manner that is believed to remove the alleged new matter. Support for the claim amendments may be found in the original disclosure of the present invention as follows:

Preferably, the height of the respective protrusions 5 from their bottom falls between 0.05 and 1.0 mm. The height referred to herein is meant to indicate the average of the height of each protrusion. If their height is smaller than the lowermost limit of the defined range, the protrusions 5 will lose their ability to improve the feel of the top sheet to the skin of wearers. On the other hand, if their height is larger than the uppermost limit of the defined range, the protrusions 5 will be readily crushed and could not keep their shape, and therefore will also lose their ability to improve the feel of the top sheet to the skin of wearers. (See page 11, lines 5-15 of the specification)

Applicants respectfully assert that the foregoing passage provides a basis for concluding that the protrusions improve the feeling that a wearer gets when the top sheet comes into contact with his skin. It follows that it would only be natural to restrict the contact area between the top sheet and the wearer's skin to avoid any associated sticky feelings. In addition, the fact that the contact points are defined such that only the wearer's skin comes into contact with the apexes of the protrusions would be readily apparent from the drawings to a person of ordinary skill in the art. Accordingly, Applicants respectfully assert that the claims as amended do not contain new matter and therefore, reconsideration and withdrawal of the rejection are respectfully requested.

Set forth on page 4, of the Office Action is the statement that:

Upon removal of the new matter from the claims, the 35 U.S.C. 103 rejections of paper #9 will be reapplied.

As further set forth in the Office Action this 103 rejection is as follows:

Claim 13 would be rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,327,730 to *Sorenson* in view of U.S. Patent No. 5,660,788 to *Gray* et al. Applicants respectfully assert that this rejection is traversed.

Claims 13 has been amended to limit the height of each protrusion to "greater than 0.0837 to 1.0 mm" so that "the protrusion height of 0.00381- 0.0837" mm disclosed in the *Sorensen* patent is excluded from the claimed invention.

Sorenson discloses a disposable diaper having a textured top sheet of thermoplastic material. However, *Sorenson* fails to disclose that the height of each protrusion is limited to "greater than 0.0837 to 1.0 mm," as set forth in amended claim 13.

Gray et al. relates to a fluid pervious top sheet that is suitable for use on an absorbent article. This reference fails to cure the deficiency of the *Sorenson* reference. Specifically, the *Gray et al.* patent also fails to disclose that the height of each protrusion is limited to “greater than 0.0837 to 1.0 mm,” as set forth in amended claim 13.

In sum, none of the cited references, neither individually nor in combination, teach or suggest the present claimed invention. That is, protrusions having a height which is limited to “greater than 0.0837 to 1.0 mm,” as positively recited in amended independent claim 13. In view of this difference, Applicants respectfully assert that amended independent claim 13 is patentable over the combination of the cited references. Therefore, reconsideration and withdrawal of the rejection are respectfully requested.

In view of the patentability of independents claims 1, 11, 12, and 13 for the reasons set forth above, dependent claims 2-7 and 10 are also patentable over the cited references.

New claims 14-17 are directed to the fine convex portions, which consist of smaller convex portions (i.e., first fine convex portions) and larger convex portions (i.e., second fine convex portions). Support for these claims may be found on page 7 line, 10 thru page 8, line 7 of the specification. Accordingly, claims 14-17 do not contain new matter. Applicants respectfully assert that these claims are also patentable over the cited references, and a notice to this effect is earnestly requested.

In light of the foregoing amendments and remarks, this application should be in condition for allowance. Early passage of this case to issue is respectfully requested. However, if there are any questions regarding this Response, or the application in general, a telephone call to the

undersigned would be appreciated since this would expedite the prosecution of the application for all concerned.

Dated: September 24, 2003

Respectfully submitted,

By


Alphonso A. Collins

Registration No.: 43,559

DARBY & DARBY P.C.

P.O. Box 5257

New York, New York 10150-5257

(212) 527-7700

(212) 753-6237 (Fax)

Attorneys/Agents For Applicant